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No. 102

In the Supreme Court of the United States

OCTOBER TERM, 1960

ANDJA KOLOVRAT, ET AL., AND ALSO BRANKO KARADZOLE, CONSUL GENERAL OF YUGOSLAVIA AT SAN FRANCISCO, CALIFORNIA, PETITIONERS

v.

STATE OF OREGON, ACTING BY AND THROUGH THE STATE LAND BOARD

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

J. LEE RANKIN,
Solicitor General,
GEO. S. LEONARD,
Acting Assistant Attorney General,
ALAN S. ROSENTHAL,
ROBERT R. POWELL,
Attorneys,
Department of Justice, Washington 25, D.C.

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OPINIONS BELOW

The Circuit Court of the State of Oregon for the County of Multnomah rendered no opinion. Its orders denying the petitions of the State of Oregon for the escheat of the property involved and directing that distribution be made (R. 76–81) are not reported. The opinion of the Supreme Court of the State of Oregon (R. 82–105) is reported at 349 P. 2d 255.

JURISDICTION

The judgments of the Supreme Court of the State of Oregon were entered on January 13, 1960. A timely motion for a rehearing was filed by petitioners on February 26, 1960, and was denied on March 1, 1960. The petition for a writ of certiorari was filed on May 26, 1960, and granted on October 10, 1960, 364 U.S. 812. The jurisdiction of this Court rests upon 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Whether, under the terms of Article II of the Convention Between The United States of America and Serbia, For Facilitating And Developing Commercial Relations, of 1881, now in force between the United States and Yugoslavia, a citizen of one of the contracting parties, domiciled in the country of his citizenship, has the right to acquire by inheritance property within the other country.

2. Whether the foreign exchange laws of Yugoslavia would preclude an American citizen domiciled in the United States from obtaining the benefit of inherited property located in Yugoslavia.

STATUTES AND TREATIES INVOLVED

The relevant provisions of the Oregon Revised Statutes, the Yugoslav Laws Regulating Payment Transactions with Foreign Countries, the Treaty Between the United States of America and Serbia, For Facilitating and Developing Commercial Relations of October 2/14, 1881, the Articles of Agreement of the International Monetary Fund of December 27, 1945, and the Agreement Between the Governments

of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals of 1948, are set forth in Appendix A, *infra*, pp. 34–40.

STATEMENT

Joe Stoich and Murharem Zekich died intestate in Oregon in December 1953, leaving certain heirs and next-of-kin resident and domiciled in Yugoslavia who, along with the Consul General of Yugoslavia, are the petitioners in this Court. Acting under Section 111.070 of the Oregon Revised Statutes, *infra*, pp. 34–35, the State of Oregon filed petitions in the Circuit Court of Oregon for the County of Multnomah for the escheat of the estate. The basis of the claim of escheat was that petitioners had no right in the respective estates and that there were no other heirs.

The Circuit Court, holding that the burden of proving the presence of reciprocity required by the Oregon statute has been met, issued orders denying the petitions of the State and directed that distribution be made (R. 76–81). The Supreme Court of Oregon reversed (R. 105–107). It held (1) that Article II of the Convention Between the United States and Serbia, For Facilitating and Developing Commercial Relations, of 1881, 22 Stat. 963, *infra*, pp. 36–37, now in force between the United States and Yugoslavia, does not apply to the estate of a United States citizen who dies intestate in the United States leaving heirs or next-of-kin who are Yugoslav subjects residing in Yugoslavia; and (2) that, regardless of the adherence of the United States and Yugoslavia to the Articles

of Agreement of the International Monetary Fund, 60 Stat. 1401, T.I.A.S. 1501, *infra*, pp. 37–39, the foreign exchange controls existing in Yugoslavia as of the date of the decedents' deaths prevented petitioners from meeting the burden of showing the right of an American citizen to receive payment in money from a Yugoslav estate (R. 104–105).

INTEREST OF THE UNITED STATES

The decision of the Supreme Court of Oregon is in direct conflict with the construction which has been consistently placed upon the Convention Between the United States of America and Serbia, For Facilitating and Developing Commercial Relations, of 1881, by the Department of State and the Yugoslav Government. It is in the interest of the United States that the construction agreed upon by both contracting parties be maintained.[1] Further, there are similar treaties existing between the United States and other countries.

SUMMARY OF ARGUMENT

I.

The court below erred in holding that the Serbian Convention of 1881, now in force between the United States and Yugoslavia, did not grant rights of inheritance to a Yugoslav resident and domiciliary where the intestate was a United States citizen who died resident in the State of Oregon.

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[1] The Yugoslav Government has called the attention of the Department of State to the decision of the court below (see App. B, *infra*, pp. 60–62).

A. The Convention of 1881 admits of two possible constructions, one restrictive and one liberal, with respect to the scope of the inheritance rights granted thereby. It is established that, in such circumstances, the more liberal construction is to be preferred. Moreover, the restrictive reading given to it by the court below is contrary to the position of both the State Department and the Yugoslav Government. It is their view that the Convention grants reciprocal rights of inheritance to the citizens and subjects of the two countries, regardless of where they reside. In the absence of compelling evidence that the consistent interpretation of the contracting parties is not in accord with the intent of the negotiators or the meaning of the Convention, the court below was obliged to give it effect.

B. The background of the 1881 Convention reflects that the construction of the contracting parties, rather than that of the court below, is the one intended at the time of negotiations. The Convention was one of a number of commercial treaties consummated during the second half of the Nineteenth Century. The provisions of these other treaties, together with the diplomatic correspondence relating to them and to the Serbian Convention, show a clear intent to provide for rights of inheritance founded upon extended principles of reciprocity, and regardless of residence. Also, the fact that the Serbian Convention provides for "most favored nation" treatment indicates that such was the intention of the signatories. The recent diplomatic correspondence between the

State Department and the Yugoslav Government concerning the scope of the Convention gives recognition to its history.

1. The Serbian Convention was preceded by treaties contracted by the United States with France and Argentina which granted liberal rights of inheritance independent of the place of residence of the devisee, legatee or heir. And the correspondence in connection with the execution of these treaties suggests a general purpose to establish such reciprocal rights. Furthermore, by reason of the "most favored nation" clauses included in the Serbian Convention, it is clear that no less rights than those afforded the citizens of Argentina and France were granted by the provisions in question.

2. Since the Serbian Convention was negotiated contemporaneously with one with Roumania, the correspondence relating to the latter is particularly pertinent. This Roumanian correspondence reveals that the negotiators recognized that there were two forms of treaties relating to rights of inheritance, one which only granted the right to dispose of property, and the other which also granted the broader rights to acquire and possess property; the more restrictive type was flatly rejected in preparing the treaty project with Roumania. It is also evident from that correspondence that both countries placed particular emphasis upon the granting of "most favored nation" treatment. This is especially significant in that they recognized that other countries had been, and would be, granted rights consonant with those of native citizens.

With immediate regard to the Serbian Convention, the diplomatic correspondence shows not only a desire for a treaty containing the same terms as that between the United States and Roumania, but also that: (1) the negotiators were well aware of the impact of the particular words they chose, and had before them, but did not use, a form of treaty which expressly provided for a residence requirement for inheritance purposes, and (2) there were "few or no Americans" residing in Serbia when the Convention came into force, so that in the view taken by the court below the rights of inheritance granted by the treaty to Americans would have been practically without effect. These considerations reinforce the conclusion that residence was not deemed material to the possession of the inheritance rights in question.

C. The court below erred in relying on *Clark* v. *Allen,* 331 U.S. 503. The provisions of the treaty at issue in that case are distinguishable from those in question here. That treaty was meant to be given a restrictive interpretation—as evidenced by the diplomatic correspondence and the provisions themselves which (1) merely granted the right to "dispose" of property, and (2) failed to provide for "most favored nation" treatment.

II

The court below also erred in its alternative holding that existing Yugoslav monetary controls would prevent an American citizen from enjoying the benefit of such property as he might inherit from a Yugoslav, and hence, under Oregon law, a Yugoslav heir of an

American citizen could not inherit. Such foreign exchange laws as exist in Yugoslavia are expressly made subject to all treaties and international agreements in force between that country and any foreign country. Thus, they are subject to the Convention of 1881. Moreover, Yugoslavia is a signatory to the Bretton Woods Agreement which recognizes and obligates the parties to permit the interchange of funds, and to maintain in this respect only such controls as are permitted by its terms. It is clear, therefore, that any exchange controls as may exist in Yugoslavia are subject to the terms of the Bretton Woods Agreement and have been agreed upon and sanctioned by the United States Government. In these circumstances, the Oregon Probate Code cannot be applied to prevent petitioners from inheriting from the Yugoslav estates involved.

ARGUMENT

Under Oregon law, petitioners are concededly entitled to the decedents' estates here involved if, under Yugoslav law, an American citizen domiciled in the United States is entitled (1) to inherit from a Yugoslav domiciliary; and (2) to obtain the benefits of the property thus inherited. Oregon Revised Statutes, Section 111.070, *infra*, pp. 34–35.

Article II of the Convention Between the United States of America and Serbia, for Facilitating and Developing Commercial Relations, of 1881, *infra*, pp. 36–37, now in force between the United States and

Yugoslavia,[2] provides for the right of the citizens or subjects of the two countries to acquire and dispose of both real and personal property by testament or inheritance. The Supreme Court of Oregon, while recognizing that a treaty between the United States and a foreign country supersedes and overrides any inconsistent state law, held that Article II of the Convention of 1881 did not confer rights of inheritance where a citizen of one country (*e.g.*, the United States) dies leaving next-of-kin who are citizens of, and domiciled in, the other country (*e.g.*, Yugoslavia). As an alternative ground for directing an escheat of the estates to Oregon, the court below held that, notwithstanding the provisions of the Articles of Agreement of the International Monetary Fund (the Bretton Woods Agreement), *infra*, pp. 37–39, the monetary controls provided by Yugoslav law would preclude an American citizen from receiving the assets of the estate of a Yugoslav decedent, and therefore, pursuant to Subsection (c) of Section 111.070 of the Oregon Revised Statute, the claims of succession to the Oregon inheritances were defeated.

Both of these holdings are erroneous. The Convention of 1881 provides reciprocal rights of acquisition and disposal by inheritance in the circumstances

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[2] The Republic of Yugoslavia is the successor government to the Kingdom of Serbia, and the Convention of 1881 is currently in force between the United States and Yugoslavia. Recognition of this fact was made in the Settlement of Pecuniary Claims Against Yugoslavia Agreement between the United States and Yugoslavia of July 19, 1948, 62 Stat. 2658, T.I.A.S. 1803, Article 5; see *In re Arbulich's Estate*, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897; *In re Stoich's Estate*, 349 P. 2d 255 (Ore.) (R. 82–105).

of this case, and has consistently been so interpreted by both governments. And the existing Yugoslav monetary controls relied on by the court below are subject to the provisions of both the Convention of 1881 and the Articles of Agreement of the International Monetary Fund (the Bretton Woods Agreement).

I

THE CONVENTION OF 1881 PROVIDES FOR RIGHTS OF INHERITANCE IN THE CIRCUMSTANCES OF THIS CASE

A. THE CONTRACTING PARTIES HAVE CONSISTENTLY CONSTRUED THE CONVENTION AS GRANTING UNRESTRICTED RECIPROCAL RIGHTS OF INHERITANCE

Article II of the Convention of 1881, *infra*, pp. 36–37, provides in relevant part that "[i]n all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant * * * in each of these states to the subjects of the most favored nation." The Oregon Supreme Court construed the phrases "in Serbia" and "in the United States" as modifying "citizens of the United States" and "Serbian subjects" respectively. This reading led the court to its conclusion that the Convention confers no rights of inheritance upon an American citizen or Yugoslav subject who is domiciled and residing (as are petitioners here) in the country of his citizenship, not in the other country.

This construction is contrary to that given the Convention by the contracting parties. The State De-

partment and the Yugoslav Government have adopted the view that the phrases "in Serbia" and "in the United States" were not intended to place a residence requirement upon the rights of inheritance granted by the Convention. See Appendix B, *infra*, pp. 41–62, especially p. 59. Their view is that these phrases modify "shall enjoy." In other words, an American citizen—irrespective of domicile—shall enjoy in Serbia (now Yugoslavia) the same rights of inheritance as are conferred by the latter country upon the citizens of the "most favored nation" (and vice versa).

As will be developed later, treaties which the United States has entered into with France and Argentina[3] plainly provide for reciprocal rights of inheritance in the circumstances of this case. See pp. 16–19, *infra*. Similarly, Yugoslavia has entered into treaties with Poland and Czechoslovakia which provide for such rights.[4] In the light of these

[3] Treaty of Friendship, Commerce, and Navigation, Between the United States and the Argentine Confederation of 1853, 10 Stat. 1005, 1009, I Malloy 20; Consular Convention with France of 1853, 10 Stat. 992, I Malloy 528.

[4] Yugoslav-Polish Treaty, 30 League of Nations Treaty Series 455; Yugoslav-Czechoslovakia Treaty, 85 League of Nations Treaty Series 185. The Yugoslav-Polish Treaty of 1923 in pertinent part provides:

"The nationals of either Contracting Party shall be allowed, on the same conditions as nationals of the country to succeed or to take possession of property passing to them in the territory of the other Contracting Party by operation of law or in virtue of testamentary disposition."

treaties, it is the official position of both Yugoslavia and the United States that the citizens and subjects of the United States and Yugoslavia are entitled to acquire or succeed by testament or inheritance to property located in the other country, regardless of where the person asserting such right may reside. Note from the Yugoslav Embassy to the Department of State, November 4, 1957, *infra*, pp. 41–43; Note from the Department of State to the Yugoslav Embassy, December 26, 1957, *infra*, pp. 43–45; Note from the Ambassador of Yugoslavia to the Secretary of State, April 18, 1958, *infra*, pp. 45–54; Note from the Secretary of State to the Yugoslav Embassy, April 24, 1958, *infra*, pp. 55–60.

In his Note No. 4298, April 18, 1958, *supra*, the Yugoslav Ambassador to the United States said:

> As regards the application of the most-favoured-nation clause to the rights of Yugoslav citizens, regardless of their permanent residence, to acquire property and to inherit estates in the United States, it is clearly explained for example, by Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and Argentina * * *.
>
> This treaty unequivocally grants Argentine citizens the same rights of inheritance as native citizens in the United States, in the same manner as the right is granted to the Yugoslav citizens by the treaty between Poland and Yugoslavia.

The Secretary of State replied in his note of April 24, 1958, *supra:*

> The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate. [*infra,* p. 57]

Furthermore, the official legal organs of the Yugoslav Government have rendered opinions that, according to the law and practice of the courts of Yugoslavia, American citizens "may inherit in the Federal People's Republic of Yugoslavia personal property under the same conditions and same judicial titles (law, will, etc.) as the citizens of the Federal People's Republic of Yugoslavia"; and, with respect to realty, American citizens are permitted under Yugoslav law to inherit "on the grounds of Art. 5 of the Decree on the control of real property of March 20,

1948 and by will on the grounds of diplomatic reciprocity in accordance with Art. 5 of the Agreement between the United States of America and the Federal People's Republic of Yugoslavia of July 19, 1948,[5] both by national treatment and by the most favored nation clause." Official Certificate of the Minister of Justice of Yugoslavia as to Laws of Inheritance, Claimant's Exhibit 5 (R. 48–49); see also the Opinion of the Supreme Court of the Federal People's Republic of Yugoslavia, Su. No. 505/49, Belgrade, August 18, 1949, Claimant's Exhibit 6 (R. 49–51). Thus, it is clear that the legal and judicial departments of the Yugoslav government, as well as its State Secretariat for Foreign Affairs, recognize that the Convention of 1881 and the laws of Yugoslavia enacted in recognition thereof grant rights of inheritance to American citizens, regardless of their residence, which are equal to those of Yugoslav citizens or the citizens of the most favored nation.

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[5] The agreement of July 19, 1948, is the Settlement of Pecuniary Claims Agreement of 1948, 62 Stat. 2658. Article 5 thereof provides:

"The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the right and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia signed at Belgrade, October 2–14, 1881."

It is settled that "where a treaty fairly admits of two constructions, one restricting, [and] the other enlarging, rights which may be claimed under it, the more liberal interpretation is to be preferred." *Bacardi Corp.* v. *Domenech,* 311 U.S. 150, 163, citing *Jordan* v. *Tashiro,* 278 U.S. 123, 127; *Neilsen* v. *Johnson,* 279 U.S. 47, 52. Moreover, the construction placed upon a treaty by the "political department" of the government is entitled to great weight. *Neilsen* v. *Johnson, supra; Charlton* v. *Kelly,* 229 U.S. 447, 468; *Factor* v. *Laubenheimer,* 290 U.S. 276, 294, 295. Accordingly, in the absence of compelling evidence that the negotiators of the Convention of 1881 intended a different meaning, the court below was obliged to give effect to the liberal interpretation consistently given it by the American and Yugoslav governments.

B. THE NEGOTIATORS OF THE CONVENTION INTENDED IT TO HAVE A BROAD APPLICATION

The background of the 1881 Convention strongly indicates that the construction of the contracting parties, rather than that of the Oregon court, is the one intended by the negotiators. The Convention was concluded as part of a series of treaties under which the United States sought to establish liberal reciprocal rights for the inheritance of properties by citizens of the United States and citizens or subjects of

foreign countries, regardless of where they might reside. To this end, Article I, *infra*, p. 36, provides that:

> There shall be reciprocally full and entire liberty of commerce and navigation between the citizens and subjects of the two high contracting powers * * *.

That the purpose was to establish rights for the exchange of property, including rights of inheritance, upon the most extended principles of reciprocity is, we believe, shown by an examination of the "negotiations and diplomatic correspondence of the contracting parties relating to the subject matter"—which are, of course, relevant in determining the meaning of a treaty. *Factor* v. *Laubenheimer*, 290 U.S. 276, 294–295; *Neilsen* v. *Johnson*, 279 U.S. at 52; cf. *In re Ross*, 140 U.S. 453, 467.

1. *The Serbian Convention was concluded as one in a series of commercial treaties which were founded upon the most extended principles of reciprocity.* The Serbian Convention was preceded by, *inter alia*, the Consular Convention With France of 1853, 10 Stat. 992, 996, I Malloy 528, 531; and the Treaty of Friendship, Commerce and Navigation, Between the United States and the Argentine Confederation, 1853, 10 Stat. 1005, 1009, I Malloy 20, 23. These treaties, in common with the Serbian Convention, dealt specifically with the matter of reciprocal rights of inheritance. Article VII of the French treaty granted "* * * the same rights within its territory in respect to real and personal property, and to inheritance, as are enjoyed there by its own citizens."

Similarly, Article IX of the Argentine treaty provides in pertinent part:

> In whatever relates to * * * *acquiring and disposing* of property of every sort and denomination, either by sale, donation, exchange, testament, or in any other manner whatsoever, * * * the citizens of the two contracting parties shall reciprocally enjoy the *same privileges, liberties, and rights,* as native citizens * * *. [Emphasis added.]

The diplomatic correspondence in connection with the execution of these treaties reveals that the purpose of the negotiators was to establish liberal reciprocal rights for the exchange of properties between the citizens of the United States and of the foreign countries, regardless of their residence. The instructions issued by the Department of State to the respective plenipotentiaries for the United States reflect that what was desired were treaties regarding commerce and property rights which would assimilate the privileges of American citizens with those of native citizens of the respective foreign countries.[4]

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[4] See Report on Negotiations dated November 30, 1850, printed as Senate Confidential Document No. 1, 31st Cong., 2d Sess., 5 Miller, *Treaties and Other International Acts of the United States of America* 861; D.S., 15 Instructions, Argentina, 19–26, 6 Miller, *supra*, 219. For example, John S. Pendleton, who negotiated the Argentine treaty on behalf of the United States, was directed by the Secretary of State as follows: "You are authorized to conclude a Treaty of Commerce and Navigation upon the *most extended principles of reciprocity*". (Emphasis added.) *Ibid.*

Further, with relation to the French treaty, the French plenipotentiary addressed himself expressly to the situation of the naturalized American citizen of French birth who dies domiciled in the United States leaving heirs resident in Europe. He noted that in the United States, to which French emigration was increasing, there was varying legislation among the states with respect to acquisition, possession, and disposition of property; that, if the French immigrant became a naturalized American citizen, he could not exempt his heirs from the force of laws excepting aliens from the acquisition of property; and that therefore "their successions become a source of difficulties." Note of the French Plenipotentiary of August 11, 1853, D.S., 16 Notes from the French Legation, 6 Miller, *supra,* 192. Thus, the plenipotentiary recognized that, if the treaty were to have the effect (with respect to inheritance rights) ascribed to the Serbian Convention by the court below, this result would obtain: a French citizen resident in the United States could make a testamentary disposition in favor of whomsoever he desired; but, if he became a naturalized citizen of the United States, he would be foreclosed from leaving his property to persons who were citizens and residents of France (nor could such persons claim any rights of succession should he die intestate). The contracting parties clearly sought to avoid this anomaly by granting in the French treaty the same rights to the citizens or subjects of the respective countries as

are enjoyed by the citizens and residents of those countries.[7] In other words the intent was to grant the right to acquire as well as dispose of property in the other country, regardless of residence or citizenship.

2. *The diplomatic correspondence pertinent to the Serbian Convention demonstrates that no residence requirement was intended to be imposed upon rights of inheritance.* We believe that the negotiators of the Serbian Convention had the same intention with respect to the rights granted thereunder as was had by the negotiators of the French and Argentine treaties. No adequate basis can be found in the diplomatic correspondence for an inference that the negotiators desired to restrict the right of inheritance granted under the Convention to the citizens of one country who were resident in the other.

The Serbian Convention was negotiated contemporaneously with one with Roumania,[8] and the negotiations on behalf of the United States were conducted by the same plenipotentiaries (John A. Kas-

[7] It is noted that, in addition to the granting of the liberal inheritance rights mentioned, the parties also provided in Article 7 of the French treaty that the President of the United States take such steps as he deemed necessary in urging the States to conform their pertinent legislation to the national policy embodied in the treaty.

[8] The commercial treaty with Roumania was never ratified by that country, although it was ratified with the advice and consent of the United States Senate. A printed copy can be found in *75 Regular Confidential Documents, United States Senate* (44th to 47th Congress, 1875 to 1883, 893–894 (1915)), which is in the library of the Department of State.

son and Eugene Schuyler).* As a result, the relevant provisions of both of these treaties were nearly verbatim, and the instructions and correspondence relating to the Roumanian treaty are relevant on the question of the intention of the parties in the Serbian Convention.

The initial instruction sent to Kasson with respect to commencing negotiations of commercial treaties with Roumania and Serbia referred him, among other things, to "the Treaty of February 26, 1871, between the United States and Italy, concerning commerce and navigation". Instruction No. 121, to Kasson, July 30, 1879. The relevant provisions of that treaty provided that the respective citizens of the contracting parties "shall have power to dispose of their personal goods within the jurisdiction of the other, by sale, donation, testament or otherwise, and their representatives * * * shall succeed to their personal goods, whether by testament, or *ab intestato* and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues

* By Instruction No. 121 to Mr. Kasson, July 30, 1879, he was given the responsibility of commencing negotiations for commercial and consular conventions with both Roumania and Serbia. The responsibility for negotiating the treaty with Roumania was transferred to Eugene Schuyler on June 28, 1880 (Instruction No. 1, to Schuyler, June 28, 1880), and on April 12, 1881, he was instructed to assume the responsibility of negotiating a similar treaty with Serbia (Instruction No. 33, to Schuyler, April 12, 1881).

Since the various instructions and dispatches mentioned on this and the following pages are not available in printed form, we have lodged photostatic copies with the Clerk for the convenience of the Court.

only as the inhabitants of the country wherein such goods are [situate] * * *."[10] Although the pertinent provisions of this treaty contained no express requirement of residence, it was of the same nature as the German treaty which was before this Court in *Clark* v. *Allen*, 331 U.S. 503.[11] In that case, this Court held that the provisions of the German treaty pertaining to the disposition of personal property did not grant to a German national residing in Germany the right to inherit from an American citizen who dies resident in the United States. See pp. 27–30, *infra*.

Subsequent correspondence relating to the negotiation of the Roumanian treaty shows that neither the Department of State nor the Roumanian Legation was satisfied with the scope of the Italian treaty. With his Dispatch No. 314 (Austrian Diplomatic Series), April 20, 1880, from Vienna, Kasson transmitted to the Department a translated copy of Communication No. 168, April 16, 1880, from J. de Balatchano, Legation of Roumania in Vienna, which note set forth the provisions of a treaty concluded

[10] The Italian treaty of 1871 provided separately for rights as to real property, and with relation thereto granted "most favored nation" treatment.

[11] It is to be noted that there are two basic lines of treaties dealing with rights of inheritance. The first includes those which merely grant the right to "dispose" of property. The second includes those which grant full rights to "acquire, possess and dispose" of property. There is some basis for raising by inference a requirement of residence in those treaties which merely grant rights of "disposal". See also *Frederickson* v. *Louisiana*, 23 How. 445, which involved a treaty granting only limited rights.

between Great Britain and Roumania on April 5, 1880 [71 Br. and Foreign States Papers 63 (1887)] as a counter-proposal to a project initially submitted by Kasson. Moreover, by State Department Instruction No. 170, to Kasson, May 4, 1880 (which was probably mailed prior to the receipt of Dispatch No. 314, *supra*), Kasson was directed by the Secretary of State, in pertinent part, as follows:

> In view of the negotiations you are conducting with Roumania for the conclusion of proper treaty relations, it is desirable that you should at the earliest practicable moment familiarize yourself with the provisions of the Anglo-Roumanian Treaty, and that, in those negotiations, you should omit no precaution to secure for the benefit of American commerce all of the privileges which may be enjoyed by the *most favored nation*. [Emphasis added.] [12]

[12] The Anglo-Roumanian Treaty is that for the facilitation of commerce contracted between England and Roumania of April 5, 1880. The relevant portion of that treaty provided:

"British subjects in Roumania and Roumanian subjects in the territories (including the Colonies and foreign possessions) of Her Britannic Majesty shall enjoy full liberty to *acquire, possess, and dispose of* * * * every description of property which the laws of the country permit or may permit the subjects of any foreign nation to acquire or to hold.

"They shall be at liberty to acquire and dispose of such property whether by sale, donation, marriage, testament, or in any other manner whatever, under the same conditions which are or may be established with respect to the subjects of any foreign nation, without being subject to any imposts, duties, or charges of any description whatever other or higher than those which are or may be levied on such foreign subjects, or on *subjects of the country*. They shall likewise be at liberty to export the proceeds of the sale of their property and goods in general, without being subjected, on such exportation,

Thus, it seems evident that the negotiators rejected the suggestion that they utilize the form of restricted language exemplified by the Italian treaty. The references to other treaties in the above instructions, as well as the contents of the instructions, indicate that the intentions of the parties were to provide for rights of inheritance and succession on extended principle of reciprocity—namely, to grant to the citizens or subjects of the other country the same rights as native citizens, without respect to residence.

In accordance with this instruction, the American negotiators inserted into the draft treaty a provision, modeled after the corresponding provisions of the Anglo-Roumanian treaty and a treaty between Belgium and Roumania,[13] which contained the phrases "citizens of the United States in Roumania" and "Roumanian subjects in the United States" in precisely the same context as those terms appear in the

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to pay as foreigners any other or higher duties than those payable under similar circumstances *by subjects of the country*, or the *subjects of any third power the most favored in these respects.*" (Emphasis added.) (Note No. 168, April 16, 1880, from J. de Balatchano, Legation of Roumania in Vienna, enclosed with Dispatch No. 314 (Austrian Diplomatic Series), April 20, 1880.)

[13] Schuyler, after succeeding Kasson as minister for the United States, disagreed with some of the wording of the Anglo-Roumanian treaty, and, therefore, with the consent of the Department of State used, in part, the Balgian-Roumanian treaty of 1881 as a model. This objection was that the Belgian-Roumanian Treaty conformed more closely to the usual form of commercial treaties. It was merely an objection to the wordage and not to the substance of the provisions. Dispatch No. 17 (Rumanian Diplomatic Series), November 20, 1880, from Schuyler (Bucharest).

Serbian treaty, as well as the "most favored nation" clause. In Dispatch No. 29 (Rumanian Diplomatic Series), January 4, 1881, Schuyler made reference to the amendment and stressed that the subjects of other foreign nations enjoyed no greater inheritance rights than the subjects of Roumania and could scarcely ask for larger rights in Roumania than those possessed by Roumanian citizens. Schuyler obviously thought that the added language had the effect of granting the *same* rights to American citizens as were possessed by Roumanians. Significantly, nowhere in any of the correspondence is there a suggestion that these rights would be conditioned upon the residence of the decedent.

Immediately subsequent to the signing of the Roumanian treaty, by Instruction No. 33, April 12, 1881, Schuyler was directed to undertake the negotiation of the Serbian Convention. With his Dispatch No. 65 (Rumanian Diplomatic Series), April 30, 1881, which acknowledged receipt of Instruction No. 33, Schuyler transmitted to the Department of State two copies of the treaty of friendship and commerce which was concluded between Great Britain and Serbia on February 7, 1880. The language used in Article I of that treaty demonstrates that no residence requirement was to be imposed with respect to the rights of citizens or subjects of the contracting parties *to acquire, hold or dispose of property* (although there was a residence requirement insofar as other matters were concerned, as shown by

the provision with respect to *commerce and trade* in the first paragraph of the following quotation):

> British subjects who *reside temporarily or permanently in Servia,* and *Servian subjects who reside temporarily or permanently in the territories * * * of Her Britannic Majesty,* shall enjoy therein, with respect to residence and the exercise of commerce and trade, the same rights as * * * natives, or the subjects of any other country the most favoured in this respect by either of the Contracting Parties.
>
> *British subjects in Servia,* and *Servian subjects in the territories * * * of Her Britannic Majesty,* shall enjoy the same treatment as natives, or as is now granted, or may hereafter be granted, to the subjects of any other country the most favoured in this respect, with regard to the acquisition, the holding, and the disposal of property, and all charges on it, with regard to access to Courts of Law and in the prosecution and defense of their rights * * *. [Emphasis added.] [Encl. 1, Dispatch No. 65 (Rumanian Diplomatic Series), April 30, 1881, from Schuyler; see also XV Hertslet, *Treaties and Conventions* (1885) 342–347.]

Of particular significance is the fact that Schuyler had before him and considered those provisions while negotiating and drafting the 1881 Serbian Convention, and yet no provision was included in the Convention which utilizes language comparable to the *first* paragraph of Article I of the Anglo-Serbian treaty quoted above (*i.e.,* establishing a residence requirement).

In this respect, several comments made by Schuyler in his Dispatch No. 66 (Rumanian Diplomatic Series), April 30, 1881, are pertinent. There, in reference to Instruction No. 33, *supra,* he said:

> * * * I have the honour to say that in my opinion it is for the interest of American commerce to conclude conventions with Serbia by which Americans will be placed on the same footing as the subjects of other countries, both as regards commercial facilities and the protection which they can receive from the laws or from their consuls. When this has been done by means of a commercial treaty and a consular convention, the Government has done all that it can do for the promotion of trade * * *.
>
> * * * Even were that prospect [the prospect that Serbia might fall under the protection of or be annexed to the Austro-Hungarian Empire] nearer than it is, it would be best for the Government of the United States to see that its citizens enjoy the same rights and privileges in Serbia as do the subjects of other powers * * *.

These statements make it clear that Schuyler's intention was to guarantee by treaty the most liberal rights that he could for American citizens.

It is also noteworthy that, in a later paragraph from the same dispatch and with reference to questions of consular jurisdiction, Schuyler said:

> In consideration, however, * * * *that there are few or no Americans residing in Serbia,* I think we could safely abandon all claims of consular jurisdiction. [Emphasis added.]

Since there were "few or no Americans residing in Serbia" when the Convention was negotiated, it is very improbable that the signatories intended to impose a residence requirement upon the inheritance rights granted thereunder. Such a requirement would have rendered the inheritance provisions of the Convention practically nugatory, at least insofar as American citizens were concerned.

After making the observations quoted above, Schuyler concluded with his opinion that "the best form [for the commercial treaty] would be that that I have just concluded with Roumania".[14] See *supra*, pp. 19–26. Thus, in the light of the historical background and the immediate negotiation of the Roumanian and Serbian Conventions, there is little question but that the construction consistently given the inheritance provisions of the Serbian Convention by the two governments is correct. Those rights are not restricted to nationals of the one country residing in the other but extend broadly to all nationals of both countries.

C. *CLARK* V. *ALLEN* IS DISTINGUISHABLE

The Supreme Court of Oregon, in holding that the Convention of 1881 conferred no rights of inheritance upon an American citizen or a Yugoslav subject who is domiciled and residing in the country of his citizenship, erroneously analogized the present case to *Clark*

[14] Schuyler consistently, thereafter, made reference to the Roumanian treaty. See Dispatch No. 77 (Rumanian Diplomatic Series), June 30, 1881; Dispatch No. 35 (Rumanian Consular Series), October 6, 1881.

v. *Allen*, 331 U.S. 503. There, this Court held that Article IV of the Treaty of Friendship, Commerce and Consular [illegible] between the United States and Germany of 192[illegible] Ser. No. 725, 44 Stat. 2132, which granted to German nationals the power to dispose of their personal property within the territories of the United States, did not cover personalty which an American citizen here undertakes to leave to German nationals, but did cover personalty in this country which a German national undertakes to dispose of by will.[15] The *Allen* case is distinguishable upon three grounds. *First,* as emphasized by this Court, when the syntax of the sentences dealing with realty and personalty is considered,[16] "[s]o far as realty [was] concerned, the testator includ[ed] 'any person'; and the property covered [was] that within the territory of

[15] Article IV provided: "*Nationals of either High Contracting Party* may have full power to dispose of their personal property of every kind *within the territories of the other*, by testament, donation, or otherwise, *and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof*, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases". [Emphasis added.]

[16] The German treaty dealt with real and personal property in separate provisions.

either of the high contracting parties. In case of personalty, the provision govern[ed] the right of 'nationals' of either contracting party to dispose of their property within the territory of the 'other' contracting party; and it is 'such personal property' that the 'heirs, legatees and donees' are entitled to take." 331 U.S. at 515. Thus, the German treaty did not grant rights of inheritance with respect to personal property where the testator or intestate was a citizen of the country in which he was situated. On the other hand, the Serbian Convention grants to the "citizens of the United States in Serbia [*i.e.*, with respect to Serbia] and Serbian subjects in the United States [*i.e.*, with respect to the United States]" the right to acquire, possess and dispose of every kind of property. *Second,* the Serbian Convention grants rights both to acquire and dispose of every kind of property, while the German treaty merely granted rights of disposal. As we have indicated (*supra* p. 21), there are two distinct lines of treaties dealing with rights of inheritance. The first includes those treaties which merely grant the right to dispose of property, and the other includes those granting the broader rights of acquisition and possession as well as disposal. *Finally,* the rights granted by the Serbian

Convention are those "which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation", whereas Article IV of the German treaty fails to provide for "most favored nation" treatment despite the fact that the parties chose to provide for such treatment with respect to other rights granted in later Articles of the treaty.[17]

[17] The court below likewise erred in relying upon *In re Arbulich's Estate*, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897. In *Arbulich*, the Supreme Court of California held, "upon the record", that the evidence was insufficient to show the existence of reciprocal rights of inheritance between the United States and Yugoslavia as of March 21, 1947, within the meaning of the California Probate Code. That court, as did the court below, discounted the provisions of the Serbian Convention on the ground that the rights granted thereunder are only granted to citizens of the United States residing in Yugoslavia or Yugoslav subjects residing in the United States. However, there was some justification for the California court's action, since the record before that court did not contain or refer to the Argentine or French treaties; neither did that court have before it the views of the Department of State and the Yugoslav government. On the other hand, the court below had all of this material before it. Thus, the *Arbulich* decision, being made expressly "upon the record", is distinguishable.

In addition, it should be noted that the Supreme Court of Montana has, on two occasions, arrived at the opposite conclusion to that of the court below and the California court in *Arbulich*. *In re Spoya's Estate*, 129 Mont. 83, 282 P. 2d 452; *In re Ginn's Estate*, 347 P. 2d 467. In each of those cases the claimants relied in part upon the Serbian Convention to prove the existence of reciprocal rights. However, the court did not explicitly place a construction on that convention, but found from the evidence adduced that reciprocity did exist.

II

THE EXISTENCE OF MONETARY CONTROLS IN YUGOSLAVIA DOES NOT PREVENT AN AMERICAN FROM INHERITING FROM A YUGOSLAV RESIDENT IN YUGOSLAVIA, AND FROM RECEIVING THE BENEFIT OF HIS INHERITANCE

Alternatively, the court below held that existing Yugoslav monetary controls would prevent an American citizen from obtaining the benefit of property which he inherited in Yugoslavia, and, therefore, pursuant to Section 111.070(1)(b) of the Oregon Revised Statutes, *infra*, pp. 34–35, a Yugoslav heir was not entitled to property he would otherwise inherit from an American decedent. This ruling is also erroneous.

Article 8 of the Yugoslav laws regulating payment transactions with foreign countries, *infra*, p. 35, makes all monetary controls subject to the treaties between Yugoslavia and the United States. Yugoslavia is a signatory to the Bretton Woods Agreement, *infra*, pp. 37–39, in which reciprocal rights for the interchange of funds are recognized. That Agreement obligates the countries participating to maintain only such controls as are permitted by its terms and within such limitations as are provided therein. By virtue of Section 4(b) of Article IV, *infra*, p. 38, the participating countries must "permit within [their] territories exchange transactions between its currency and the currencies of other members", within specified limits; and Section 3 of Article VI, *infra*, p. 38, provides that the "[m]embers may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict

payments for current transactions or which will unduly delay transfers of funds in settlement of commitments * * *," with certain irrelevant exceptions. Both the United States and Yugoslavia, by becoming signatories to the Bretton Woods Agreement have agreed and recognized that either or both could impose unlimited monetary controls to regulate capital movements, but could not altogether refuse to permit exchange transactions or restrict payments for current transactions. Thus, it is clear that Section 111.070(1)(b) of the Oregon Probate Code, at least in so far as it precludes inheritance by an alien whenever *any* monetary controls exist, has been overridden and superseded by the Bretton Woods Agreement and the overriding federal policy declared thereby.

Moreover, by reason of Article 5 of the Agreement Between the Government of the United States of America and the Government of the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals of 1948 (the Agreement of 1948), *infra,* pp. 39–40, the Government of Yugoslavia is obligated to accord to American citizens the rights of using and administering such assets as they may hold or thereafter acquire within the framework of the "controls and regulations of the Government of Yugoslavia." The committee report on that Agreement recognizes that Article 5 "obliges Yugoslavia [pursuant to the Convention of 1881] to continue to grant most-favoured-nation treatment to Americans in ownership and acquisition of assets in Yugoslavia * * * [and that] Yugoslavia is required, by Article 10 [*infra,* p. 40], to authorize per-

sons in Yugoslavia to pay debts to United States nationals, firms, or agencies, and, so far as feasible, to permit dollar transfers for such purposes." S. Rep. No. 800, 81st Cong., 1st Sess., p. 4. Furthermore, the Yugoslav Government clearly recognizes the force and effect of this agreement, and that under it, as well as under the Yugoslav probate laws, American citizens may inherit property in Yugoslavia under the "same conditions * * * as the citizens of the Federal People's Republic of Yugoslavia." Official Certificate of the Minister of Justice of Yugoslavia as to Laws of Inheritance, Claimant's Exhibit 5 (R. 48–49). See also the Note from the Ambassador of Yugoslavia to the Secretary of State, April 18, 1958, *infra*, pp. 45–54. Thus, even if the Bretton Woods Agreement is assumed not to override and supersede Section 111.070(1)(b) of the Oregon Probate Code, the Agreement of 1948 clearly reflected the position of the two governments and in so doing reasserted the force and effect of the Convention of 1881.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgments of the Supreme Court of the State of Oregon should be reversed.

J. LEE RANKIN,
Solicitor General.
GEO. S. LEONARD,
Acting Assistant Attorney General.
ALAN S. ROSENTHAL,
ROBERT E. POWELL,
Attorneys.

JANUARY 1961.

APPENDICES

Appendix A

Statutes and Treaties Involved

1. Section 111.070 of the Oregon Revised Statutes provides as follows:

> (1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:
>
> (a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;
>
> (b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and
>
> (c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.
>
> (2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

(3) If such reciprocal rights are not found to exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property.

2. Article 8 of the Yugoslav laws regulating payment transactions with foreign countries provides as follows (Law To Regulate Payments to and From Foreign Countries (Foreign Exchange Law) (Official Gazette of the Federal People's Republic of Yugoslavia, Friday, October 25, 1946, Belgrade, No. 86, Year II)):

Foreign exchange regulations are understood to include provisions of this Law; provisions of regulations for the implementation of this Law; orders, instructions and rulings of the Minister of Finance of the FPRY issued pursuant to this Law; all regulations for the control of imports and exports issued by the Minister of Foreign Trade of the FPRY; and all such provisions of agreements with foreign countries as relate to payments.

3. The relevant provisions of the Treaty Between the United States of America and Serbia, For Facilitating and Developing Commercial Relations of 1881, 22 Stat. 963, II Malloy, Treaties 1613, are as follows:

A Proclamation

Whereas, a Treaty between the United States of America and His Highness the Prince of Serbia, for facilitating and developing the commercial relations established between the two countries, was concluded and signed at Belgrade by their respective plenipotentiaries on the 2/14 day of October, 1881, the original of which treaty, being in the English and Serbian languages, is word for word as follows:
Treaty of Commerce Between the United States of America and Serbia.

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named * * * their respective plenipotentiaries * * *

* * * * *

Who * * * have agreed upon and concluded the following articles:

Article I.

There shall be reciprocally full and entire liberty of commerce and navigation between the citizens and subjects of the two high contracting powers, who shall be at liberty to establish themselves freely in each other's territory.

* * * * *

Article II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatsoever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

4. The relevant provisions of the International Monetary Fund Agreement, 60 Stat. 1401, 1403, T.I.A.S. 1501, are as follows:

Article IV.

PAR VALUE OF CURRENCIES

Section 1. *Expression of par values.*

* * * * *

Section 2. *Gold purchases based on par values*

* * * * *

Section 3. *Foreign exchange dealings based on parity*

The maximum and the minimum rates for exchange transactions between the currencies of members taking place within their territories shall not differ from parity.

(i) in the case of spot exchange transactions, by more than one percent; and

(ii) in the case of other exchange transactions, by a margin which exceeds the margin for spot exchange transactions by more than the Fund considers reasonable.

Section 4. *Obligations regarding exchange stability*

(a) Each member undertakes to collaborate with the Fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

(b) Each member undertakes, through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under Section 3 of this Article. * * *

* * * * *

Article VI.

Capital Transfers

Section 1. *Use of the Fund's resources for capital transfers*

(a) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund.

* * * * *

Section 2. *Special provisions for capital transfers*

* * * * *

Section 3. *Controls of capital transfers*

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3(b), and in Article XIV, Section 2.

* * * * *

Article VIII.

General Obligations of Members

Section 1. *Introduction*

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2. *Avoidance of restrictions on current payments*

(a) Subject to the provisions of Article VII, Section 3(b), and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

5. The Agreement Between the Governments of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals, July 19, 1948, 62 Stat. 2658, T.I.A.S. 1803, provides, in pertinent part:

ARTICLE 5

The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the

controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2–14, 1881.

* * * * *

ARTICLE 10

(a) The Government of Yugoslavia shall authorize persons residing in Yugoslavia who are legally indebted to any individual, firm, or governmental agency in the United States, to meet such indebtedness on maturity.

(b) To the extent feasible, considering Yugoslav foreign exchange resources and regulations, and when necessary to effectuate the purposes of paragraph (a) of this Article, the Government of Yugoslavia shall permit the use of dollars by, or provide dollars to those Yugoslav residents legally owing dollar obligations arising from commercial transactions involving goods or services.

* * * * *

Appendix B

Diplomatic Correspondence

From the Yugoslav Embassy to the Department of State, November 4, 1957:

No. 4693

The Embassy of Yugoslavia presents its compliments to the Department of State and has the honor to inform the Department that citizens of Yugoslavia, heirs, next-of-kin, devisees and legatees of deceased residents of the United States, continue in some States to meet with difficulties in being recognized as such. This appears to be due to the requirement of such States of proof of reciprocity in such matters. Although under the law of Yugoslavia, competent and conclusive evidence of which has been furnished to the appropriate executive and judicial authorities in such States, citizens of the United States have full rights of inheritance to property in Yugoslavia, both real and personal, by intestacy or as beneficiaries under a will, some doubt has been indicated by certain of such authorities as to whether in practice such rights have been recognized. In such circumstances, proof of numerous instances of the inheritance by American citizens of property in Yugoslavia and of the formal recognition thereof by the competent Yugoslav authorities, has been tendered to such authorities, but has been rejected as inconclusive. The Government of Yugoslavia is unaware of any instance in which an American citizen entitled to the inherit-

ance of property in Yugoslavia as heir, next-of-kin, devisee or legatee of a decedent has been denied the right to such inheritance. Accordingly, it will be appreciated if the Department of State would advise the Embassy whether or not any such instance, or alleged instance, has been brought to the Department's attention.

The Government of Yugoslavia has always recognized the right of an American citizen to have his funds derived from inheritance in Yugoslavia transferred to him in the United States in Dollars, the legal basis for this right having been stated in the Embassy's note No. 4135 dated March 27, 1957. The Government of Yugoslavia is also unaware of any instance in which an American citizen, an heir or and [sic] beneficiary of a decedent [sic] estate in Yugoslavia, has, upon application therefor, been denied the right to the transfer of his inheritance or the proceeds of the sale thereof, to the United States in Dollars. Since, however, some doubt has been expressed by certain authorities in some States as to whether the regulations, policy and procedures described in the Embassy's note under reference have been followed in practice, it would be appreciated if the Department would advise the Embassy whether or not there has been brought to the attention of the Department any instance or alleged instance in which an American beneficiary of a decendent [sic] estate in Yugoslavia has, upon application therefor, been denied the right to the transfer of his inheritance, or proceeds of the sale thereof, to the United States in Dollars.

If any report of any instance or alleged instance in either of the categories described above has come to the Department's attention, in order that the competent authorities in Yugoslavia may investigate the

same and ascertain the facts, it is requested that the Embassy be informed to the fullest extent possible as to each such instance of all relevant particulars, including (1) the name and address of the American citizen involved, (2) the name and address, and the date and place of death of the Yugoslav decendent [sic] whose estate was involved, (3) the Yugoslav court in which such estate was probated, and (4) in the case of instances in the latter category, the Yugoslav agency to which application for transfer is said to have been made, and when. . . .

The Embassy avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration.

Washington, D.C., November 4th, 1957.

Department of State, Washington, D.C.

From the Department of State to the Yugoslav Embassy, December 26, 1957:

The Department of State acknowledges receipt of Note No. 4693, dated November 4, 1957, from the Embassy of Yugoslavia, regarding difficulties currently being encountered in some States in the United States by citizens of Yugoslavia, heirs, next-of-kin, devisees and legatees of deceased resident of the United States, in being recognized as such in some States in the United States which require proof of reciprocity.

The Embassy states that citizens of the United States have full rights of inheritance to property in Yugoslavia, both real and personal, and that the Government of Yugoslavia is unaware of any instance in which an American citizen entitled to inherit property in Yugoslavia has been denied the right to such inheritance or has, upon application therefor, been denied the right to the transfer of his

inheritance, or the proceeds of the sale thereof, to the United States in dollars. However, certain State authorities have indicated some doubt as to whether in practice such rights of inheritance have been recognized, and have rejected as inconclusive the tendered proof of numerous instances of the inheritance by American citizens of property in Yugoslavia.

The Embassy therefore asks to be advised if there has been brought to the attention of the Department of State any instance or alleged instance in which an American citizen entitled to the inheritance of property in Yugoslavia as heir, next-of-kin, devisee or legatee of a decedent has been denied the right to such inheritance or has, upon application therefor, been denied the right to the transfer of his inheritance, or the proceeds of the sale thereof, to the United States in dollars.

The Department assumes that the Embassy's inquiry relates only to cases in which the claimant was an American citizen on the date of the death of the decedent.

The Department of State does not have complete and up-to-date information regarding all claims of American citizens to share in estates in Yugoslavia or the action taken by the appropriate Yugoslav authorities on every application by an American citizen to transfer the proceeds of his shares of an estate in dollars to the United States. Such matters are ordinarily handled in Yugoslavia, as in other countries, by the heir or devisee personally or by a legal representative acting on his behalf.

Numerous inquiries are, of course, addressed to the Department or to American diplomatic and consular officers stationed in the country in which the estate is being administered or in which the property is located requesting advice and assistance. The Depart-

ment is normally informed of later developments in the case only when the American citizen concerned believes he is in danger of being denied the share of an estate alleged to be rightfully his, or when he believes he is encountering unwarranted difficulties or undue delay in effecting the transfer to the United States of the proceeds of his share of an estate.

In the light of the foregoing, the Embassy is informed that the Department has not been apprised of any instance where an American citizen has not been permitted to inherit or succeed by will or otherwise to property from an estate in Yugoslavia, or, after having duly made application therefor, has not been granted permission to transfer his inheritance or the proceeds of the sale thereof to the United States in dollars.

Department of State, Washington.

December 26, 1957.

S/S CR.

From the Ambassador of Yugoslavia to the Secretary of State, April 18, 1958:

No. 4298

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and, in accordance with talks held between representatives of the Yugoslav Embassy and representatives of the Department of State, has the honor to inform the Honorable the Secretary of State that in the United States there have in the post-war period been various interpretations of Article II of the "Convention for Facilitating and Developing Commercial Relations" concluded between Serbia and the United States on October 2/14, 1881,

(also commonly called the Convention of Commerce and Navigation of 1881, Treaty Series 319, 22 Stat. 936, 2 Malloy's Treaties, ect. [*sic*] 1613. The governments of the Federal People's Republic of Yugoslavia and of the United States of America recognize that this Convention has at all times been and is now in force between Yugoslavia and the United States. Article II of the Convention reads in the English text as follows:

> "In all that concerns the right of acquiring, or possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian Subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favoured nation."
>
> "Within these limits, and under the same conditions as the subjects of the most favoured nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favoured nation."
>
> "They shall likewise be at liberty to export freely the proceeds of the sale of their property and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favoured state."

In the period since 1945 there have been cases in which Article II of the Convention of Commerce and Navigation of 1881, when applied in the United States, was interpreted as if it did not sufficiently bear

out reciprocal rights of inheritance between the citizens of the Federal People's Republic of Yugoslavia and the citizens of the United States of America. According to the interpretations (particularly a statement by the Supreme Court of California in the case In re Arbulich Estate, 41 Cal. 2d 86, 257 P. 2d 433 and statements of some State attorneys general), the provisions of the Convention allegedly cannot be applied to those decedents' estates, the decedent of which is an American citizen who has left property in the United States to a Yugoslav citizen residing in Yugoslavia. According to such an interpretation, the acquisition of property by inheritance, pursuant to the provision of the most-favoured-nation clause in Article II of the Convention, encompasses only those citizens of Yugoslavia actually and physically living, sojourning or residing within the borders of the United States regardless of the decedent's citizenship. On the other hand, according to such an interpretation, the Yugoslav citizens permanently residing within the borders of Yugoslavia cannot inherit property left them by a resident of the United States, although the heirs are in most cases the closest relatives of the decedent's—his parents, spouse, children, brothers, sisters, etc. And vice versa, the corresponding should, then, apply as regards the inheritance rights of American citizens in Yugoslavia.

Such an interpretation, however, is directly contrary to the past and present interpretation of the Yugoslav courts and authorities, who always have been applying the provisions of Article II of the Convention so that by virtue thereof the American citizens are entitled to acquire property by inheritance, testamentary disposition or intestate succession, or by transfer, regardless of whether they are permanently residing in the United States of America, or anywhere else, as well as

regardless of whether the decedent is a citizen of Yugoslavia, the United States or any third country. This can be clearly deduced from many a decision of the Yugoslav courts, who have been applying and interpreting Article II of the Convention exclusively in the above sense.

In Article 23 of the Convention of Legal Relations between Yugoslavia and Poland, concluded on May 4, 1923, (85 League of Nations Treaty Series 455) the two contracting parties extended rights of inheritance to the nationals of the other as follows:

> "The nationals of either Contracting Party shall be allowed, on the same conditions as nationals of the country to succeed or to take possession of property passing to them in the territory of the other Contracting Party by operation of law or in virtue of testamentary disposition."

It is the construction of the Yugoslav Government that under the most-favoured-nation clause of Article II of the Convention of 1881 citizens of the United States regardless of their whereabouts or residence have had extended to them and are entitled to enjoy the same rights of inheritance from decedents' estates and of property located in Yugoslavia as nationals of Yugoslavia themselves, and regardless of whether the decedent was a citizen of Yugoslavia, the United States of America or any third country.

As regards the application of the most-favoured-nation clause to the rights of the Yugoslav citizens, regardless of their permanent residence, to acquire property and to inherit estates in the United States, it is clearly explained for example, by Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and Argentina, signed at San Jose on July 27, 1853 (10 Stat./Pt. 2, Public Treaties/16 Treaty Series 4, I Treaties/Malloy/20);

"In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods and effects, and to the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights, as native citizens: and they shall not be charged, in any of those respects with any higher imposts or duties than those which are paid or may be paid, by native citizens, submitting, of course, to the local laws, and regulations of each country respectively. If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the Consul-General or Consul of the nation to which the deceased belonged, or the representative of such Consul-General or Consul, in the absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs."

This treaty unequivocally grants Argentine citizens the same rights of inheritance as native citizens in the United States, in the same manner as the right is granted to the Yugoslav citizens by the treaty between Poland and Yugoslavia. It will be observed that in substance the 1853 treaty with Argentina is very similar to the 1923 treaty between Poland and Yugoslavia.

It is further the construction of the Yugoslav Government that by virtue of the most-favored-nation clause and the trird [sic] subparagraph of Article II of the Convention of 1881, American citizens, wherever they may physically be or permanently reside,

have and must be accorded the right to withdraw and export, i.e. have transferred to them upon request to the United States or wherever they may direct, moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The interpretation of the Yugoslav Government is also based on the spirit and intentions stated in the preamble to the Convention of Commerce and Navigation of 1881, as well as on the basis of the needs resulting from the relations which prevailed at that time between the two countries.

It is apparent, therefore, that the construction of the treaty adopted by the Supreme Court of California in In Re Arbulich Estate is not in accord with the understanding of the Yugoslav Government concerning the meaning and the effect of Article II of the Convention of 1881. This construction requires that there be twice read into the language the word "residing" or at least the word "sojourning" so the clause could read "citizens of the United States residing (or sojourning) in Serbia and Serbian citizens residing (or sojourning) in the United States". It requires no addition of words in the treaty to rephrase from Victorian into modern English what was beyond doubt the intention of the treaty-makers as to the persons to be covered by the treaty.

Article 5 of the "Agreement Between the Government of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Citizens", concluded on July 19, 1948, (Treaty Series No. 1803, 72 Stat. 2133) provides as follows:

> "The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets

in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favourable than the rights and privileges accorded to nationals of Yugoslavia or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2/14, 1881."

It is evident that both Parties have confirmed thereby that Article II of the Convention of 1881 is to be interpreted to the effect that the citizens of one contracting party shall have the most-favoured-nation treatment when acquiring property in the territory of the other, regardless of the heir's residence or the decedent's citizenship. This joint interpretation (reached by both contracting parties) confirms the already reached concurrence on the existence of the rights of American citizens in Yugoslavia (and accordingly of the Yugoslav citizens in the United States of America) to acquire property (and accordingly to inherit) by virtue of Article II of the Convention of 1881, regardless of the heir's residence and the decedent's citizenship.

The Commission for Interpreting of Laws of the National Assembly of the Federal People's Republic of Yugoslavia issued on August 3, 1953, and the National Assembly subsequently confirmed, a binding interpretation, as follows:

"According to Article 5 of the Agreement between the Government of the United States of America and the Federal Peoples Republic of Yugoslavia regarding Pecuniary Claims of the United States of America and its Citizens concluded on July 19, 1948, and the provisions of Article II of the Convention of Commerce and

Navigation between Serbia and the United States of America, concluded in October 2/14, 1881, which is still in force, citizens of the United States of America are equal with citizens of the Federal People's Republic of Yugoslavia in regard to the manner and object of acquiring and disposing of both personal and real property. Accordingly, they have the right to inherit real property in the territory of the Federal People's Republic of Yugoslavia under the same conditions as citizens of the Federal People's Republic of Yugoslavia on the basis of the law, as well as on the basis of a Testament, regardless of the provision of Article 5, paragraph 1 of the Decree regarding the Control of Transfers of Real Property, of March 20 1948."

In the note of the Secretariat of State for Foreign Affairs of Yugoslavia No. 515370/53 of October 21, 1953, to the American Embassy in Belgrade, in response to the American Embassy's note No. 1368 of May 21, 1953, unqualified assurances were given by the Yugoslav Government that it considers citizens of the United States, regardless of their whereabouts or residence, to have full reciprocal rights of inheritance in decedent's estates located in Yugoslavia on the basis of Article II of the Convention between Serbia and the United States of 1881, as confirmed by Article 5 of the Agreement on Pecuniary Claims of the United States and its Citizens, concluded on July 19, 1948.

The Attorneys General of both Oregon and California, which enacted the so-called reciprocal inheritance rights statutes in the years 1937 and 1941 respectively, issued opinions that reciprocal inheritance rights existed between Yugoslavia and the United States in the same manner required by their statutes by virtue of Article II of the Convention between

Serbia and the United States of 1881. The opinion of the Honorable I. H. Van Winkle, Attorney General of Oregon is in the 1938–1940 volume of the Opinions of the Attorneys General at page 136, that of the Honorable Earl Warren, Attorney General of California, is No. 1 NS 4451 dated July 15, 1942, from which the following is quoted:

> "Class 2. Where the same or reciprocal rights in the matter of acquiring and holding all kinds of property in any manner whatsoever are not granted to the citizens of the respective parties to the treaty in those specific words, but are in effect so granted by conferring such rights upon those citizens which the respective laws grant or shall grant in each of the states to the subjects of the most-favoured-nation, and under the same conditions as subjects of the most-favoured-nation."
>
> "In the class is Yugoslavia (the Treaty applying also to Serbia and the Kingdom of the Serbs, Croats and Slovenes) the citizens of which are entitled, by virtue of the reference provisions of such Treaty, to the same rights as those enjoyed by the citizens of Argentina."

In substantiation of the fact that Yugoslavia has always meticulously performed and carried out the obligations which, under its construction of the Convention, are due American citizens heirs or beneficiaries of estates and property in Yugoslavia, reference may be made to the Department's note of December 26, 1957, in response to this Embassy's note of November 4, 1957, No. 4693, wherein the Department stated:

> "In the light of the foregoing, the Embassy is informed that the Department has not been apprised of any instance where an American citizen has not been permitted to inherit or succeed by will or otherwise to property from an estate in Yugoslavia, or, after having duly made

application therefor, has not been granted permission to transfer his inheritance of the proceeds of sale thereof to the United States in dollars."

In view of the foregoing, the Government of the Federal People's Republic of Yugoslavia would appreciate being advised of the opinion of the Government of the United States on the following:

Whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention for Facilitating and Developing Commercial Relations of 1881 and Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States and its Citizens of 1948 to safeguard the inheritance rights of American Citizens and to ensure the transfer of the proceeds accruing thereof regardless of their permanent residence, encompassing therefore also those American citizens residing in the United States, and reversely, whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention of 1881 and Article 5 of the Agreement of 1948, to safeguard the inheritance rights of Yugoslav citizens and to ensure the transfer of the proceeds accruing thereof, regardless of their permanent residence, encompassing therefore also those residing in Yugoslavia?

The Yugoslav Ambassador avails himself of this opportunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.

Washington, D.C., April 18, 1958.

From the Secretary of State to the Yugoslav Embassy, April 24, 1958:

The Secretary of State presents his compliments to the Charge d'Affaires ad interim of the Federal People's Republic of Yugoslavia and acknowledges the receipt of the Embassy's note No. 4298 of April 18, 1958, regarding the interpretation of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation), concluded on October 2/14, 1881 between the United States of America and Serbia and presently in force between the United States of America and Yugoslavia. (22 Statutes at Large 963, Treaty Series 319.)

According to the Embassy's note, the Government of Yugoslavia considers that, by virtue of Article II of the 1881 Convention, citizens of the United States are entitled to most-favored-nation treatment with respect to the acquisition, possession, or disposition of property in Yugoslavia whether they reside in Yugoslavia or elsewhere and, in the case of inheritance, regardless of the decedent's nationality. With particular reference to inheritance, the Embassy states that, in accordance with this construction of Article II of the 1881 Convention, United States citizens, regardless of their residence or of the decedent's nationality, are entitled to and do actually enjoy the same rights as Yugoslav nationals with respect to the inheritance of property in Yugoslavia. This, as the note points out, is in consequence of the fact that United States citizens, wherever resident, are accorded in Yugoslavia treatment no less favorable than that accorded in Yugoslavia to nationals of Poland under Article 23 of the Treaty Regarding Legal Relations concluded on May 4, 1923 between Yugoslavia and Poland, whereby

Polish nationals, irrespective of their residence, are accorded national treatment (that is, the same treatment as Yugoslav nationals) in regard to the succession to and possession of property in Yugoslavia.

The Embassy's note cites Article IX of the Treaty of Friendship, Commerce and Navigation of July 27, 1853 between the United States of America and Argentina, which contains a national-treatment provision similar in substance to the provision in Article 23 of the 1923 treaty between Yugoslavia and Poland. The note indicates that, by the application of such provision together with the most-favored-nation provision in Article II of the 1881 Convention, Yugoslav nationals are entitled to and should be accorded, whether they reside in the United States or elsewhere and regardless of the decedent's nationality, the right to acquire, possess, or dispose of property in the United States.

The Embassy's note further states that the Yugoslav Government, pursuant to the third paragraph of Article II of the 1881 Convention, accords to American citizens, wherever they reside, the right to withdraw and have transferred to them moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The Embassy's note called attention to the agreement of July 19, 1948 between the United States of America and Yugoslavia regarding the settlement of pecuniary claims against Yugoslavia, and particularly to Article 5 of that agreement which has the effect of confirming that Article II of the 1881 Convention is interpreted as according rights in regard to property in one or the other of the two countries irrespective of the place of residence of the nationals concerned or of the decedent's nationality.

The Embassy's note inquired whether the United States Government concurs with the Yugoslav Government's interpretation of Article II of the 1881 Convention, particularly as applied to the rights of Yugoslav nationals who do not reside in the United States. It appears that the Embassy's inquiry is prompted by indications that some State attorneys general in the United States are tending toward the adoption of a contrary view. The note refers to a statement by the Supreme Court of California in the case of In re Arbulich's Estate, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897 (1953).

It is well to bear in mind a general principle applied in the United States, namely, that although an expression of opinion by the Department of State with respect to the interpretation of a treaty provision will normally be given considerable weight by the courts, such an expression of opinion is not binding on the courts.

The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate.

Article II of the 1881 Convention is quoted in the Embassy's note, so it will not be set forth here. The critical words "citizens of the United States in Serbia

and Serbian subjects in the United States shall enjoy [certain rights]" as they appear in the first paragraph of Article II may be given at least two plausible interpretations, namely: (1) The words "in Serbia" and "in the United States" may be deemed adjectival, modifying respectively "citizens of the United States" and "Serbian subjects". (2) The words "in Serbia" and "in the United States" may be deemed adverbial, modifying "shall enjoy". The first of these interpretations would limit the application of the article to the rights of nationals of the one country present in the other. However, a literal reading of the pertinent phraseology in context does not require such a restrictive interpretation. Rather, a liberal interpretation of the ambiguous portion produces a reasonable construction consonant with the spirit of the Treaty as a whole.

Under the first, or restrictive interpretation, an American citizen residing in Yugoslavia would be accorded under the most-favored-nation provision whatever rights in respect of the acquisition, possession, or disposition of property in Yugoslavia were accorded to nationals of a third country (for example, Poland under the 1923 treaty which the note cites) who were resident therein. However, American citizens outside Yugoslavia would not be accorded rights similar to rights under Yugoslav law enjoyed by Polish nationals who were not resident therein.

A review of the negotiating history of the 1881 Convention discloses nothing which supports the theory that the Governments of the United States and Serbia intended to provide that only some and not all of the nationals of the respective countries would be entitled to most-favored-nation treatment with respect to the acquisition, possession, and disposition of property.

In this connection, it appears to have been the consistent policy of the United States, as reflected in treaties concluded between 1850 and 1890, to accord rights of inheritance and succession to property to nationals of the other contracting party without regard to their residence at the time of the decedent's death.

As stated in the preamble thereto, the 1881 Convention was entered into for the purpose of "facilitating and developing the commercial relations established between the two countries". The restrictive view would probably produce results inconsistent with this purpose. For example, a national of one country, also resident therein, wishing to make an *inter vivos* disposition of property belonging to him and located in the other country would have been required to make the long and then arduous trip to the other country to effect the disposition. It seems equally inconsistent with the expressed purpose of the Convention to make an alien's rights of inheritance turn on his location at the time of decedent's death.

Therefore, in the absence of clear and unmistakable evidence of a contrary intention on the part of the negotiators, it appears that the interpretation most consistent with the purpose of the Convention, and with the policy reflected in treaties between the United States of America and other countries, is to interpret the words "in Serbia" and "in the United States" as referring to the place where property rights are granted rather than to the geographical location of the person claiming such rights. As thus construed, the provision would accord to nationals of either party *wherever resident* rights similar to those enjoyed by nationals of the most-favored-nation *wherever resident*. A review of all relevant corre-

spondence available at the National Archives indicates no intention contrary to this interpretation. As the Supreme Court has said:

> "Treaties are to be construed in a broad and liberal spirit, and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. Hauenstein v. Lynham, 100 U.S. 483, 487; Geofroy v. Riggs, supra, 271; Tucker v. Alexandroff, 183 U.S. 424, 437." Asakura v. Seattle, 265 U.S. 332, 342 (1924).

This note, of course, is not to be considered as having the character of an international agreement or as effecting any modification of the treaty.

Department of State, Washington, April 24, 1958.
211.683/4-1858

From the Ambassador of Yugoslavia to the Secretary of State, April 7, 1960:

No. 4306/60

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and has the honor to refer to their previous exchange of communications, No. 4298 of April 18, 1958, and No. 211.683/4–1858 of April 24, 1958, respectively, concerning the construction and meaning of Article II of the Convention of Commerce and Navigation concluded October 2/14, 1881, in force and effect between the United States and Yugoslavia. In consequence of the identity of the views expressed in such exchange of communications, the Ambassador considers it appropriate to draw the attention of the Secretary of State to the recent decision of the Supreme Court of the State

of Oregon in the cases of *State Land Board* v. *Kolovrat* and *State Land Board* v. *Zekic*, 349 P.(2d) 255, rehearing denied March 2, 1960, wherein the provision of the Convention under reference was given a meaning and construction widely at variance with such views, and in express disregard thereof. The Court denied the right under such Convention of citizens and residents of Yugoslavia to inherit property in Oregon, and in the absence of other heirs, decreed such property to be escheated to the State.

In the circumstances, it is intended to apply as promptly as practicable, on behalf of the Yugoslav heirs, to the Supreme Court of the United States for a writ of certiorari to the Supreme Court of the State of Oregon, and the Secretary of State may wish to consider whether it would not be appropriate for the United States at the proper time to seek leave of the Supreme Court of the United States to file, as amicus curiae, a brief or other expression of its views, in support of such petition. The Government of Yugoslavia, no less than the Yugoslav heirs concerned, would welcome such action on the part of the United States because of the effect that the decision of the Supreme Court of the State of Oregon, if not reversed, may have on pending cases, and others that undoubtedly will arise in the future, not only in Oregon, but in other States, including, but not necessarily limited to, California, Montana, Arizona, Nevada, Iowa and Louisiana.

In view of the effect that the said decision may have on the mutual relations under the Convention of Commerce and Navigation of 1881 as well, the Yugoslav Ambassador would greatly appreciate it if the Honorable the Secretary of State would advise him of His views in the premises at His early convenience.

The Ambassador of the Federal People's Republic of Yugoslavia avails himself of this opportunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.

Washington, D.C., April 7, 1960.

The Honorable, The Secretary of State, Washington, D.C.

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